

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

**DAVID A. RATH, M.D.**

Holder of License No. 17545  
For the Practice of Allopathic Medicine  
In the State of Arizona.

Case No. MD-06-0258A

**CONSENT AGREEMENT FOR  
SUSPENSION AND PROBATION**

**CONSENT AGREEMENT**

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and David A. Rath, M.D. ("Respondent"), the parties agreed to the following disposition of this matter.

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges that he has the right to consult with legal counsel regarding this matter and has done so or chooses not to do so.

2. By entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. The Board may adopt this Consent Agreement of any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent.

1           5. This Consent Agreement does not constitute a dismissal or resolution of other  
2 matters currently pending before the Board, if any, and does not constitute any waiver,  
3 express or implied, of the Board's statutory authority or jurisdiction regarding any other  
4 pending or future investigation, action or proceeding. The acceptance of this Consent  
5 Agreement does not preclude any other agency, subdivision or officer of this State from  
6 instituting other civil or criminal proceedings with respect to the conduct that is the subject  
7 of this Consent Agreement.

8           6. All admissions made by Respondent are solely for final disposition of this  
9 matter and any subsequent related administrative proceedings or civil litigation involving  
10 the Board and Respondent. Therefore, said admissions by Respondent are not intended  
11 or made for any other use, such as in the context of another state or federal government  
12 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or  
13 any other state or federal court.

14           7. Upon signing this agreement, and returning this document (or a copy thereof) to  
15 the Board's Executive Director, Respondent may not revoke the acceptance of the  
16 Consent Agreement. Respondent may not make any modifications to the document. Any  
17 modifications to this original document are ineffective and void unless mutually approved  
18 by the parties.

19           8. If the Board does not adopt this Consent Agreement, Respondent will not  
20 assert as a defense that the Board's consideration of this Consent Agreement constitutes  
21 bias, prejudice, prejudgment or other similar defense.

22           9. This Consent Agreement, once approved and signed, is a public record that will  
23 be publicly disseminated as a formal action of the Board and will be reported to the  
24 National Practitioner Data Bank and to the Arizona Medical Board's website.  
25

1        10. If any part of the Consent Agreement is later declared void or otherwise  
2 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in  
3 force and effect.

4        11. Any violation of this Consent Agreement constitutes unprofessional conduct  
5 and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order,  
6 probation, consent agreement or stipulation issued or entered into by the board or its  
7 executive director under this chapter") and 32-1451.

8        12. ***Respondent has read and understands the condition(s) of probation.***

9  
10          
11        DAVID A. RATH, M.D.

DATED: 04/09/07

1 **FINDINGS OF FACT**

2 1. The Board is the duly constituted authority for the regulation and control of  
3 the practice of allopathic medicine in the State of Arizona.

4 2. Respondent is the holder of license number 17545 for the practice of  
5 allopathic medicine in the State of Arizona.

6 3. The Board initiated case number MD-06-0258A after receiving notification  
7 from the Delaware County Prosecuting Attorney's Office of Ohio of an intervention with  
8 Respondent in lieu of a conviction.

9 4. On July 25, 2006, while acting as the Delaware County Coroner,  
10 Respondent was called to the crime scene of an overdose victim. The police took a written  
11 inventory of the decedent's drugs at the crime scene, including Hydrocodone and  
12 Morphine Sulfate of unknown quantities and placed all the medications into evidence.  
13 Respondent arrived on the scene to make a report. After Respondent left, the police noted  
14 the bottle of Morphine was missing.

15 5. On July 25, 2006 and July 29, 2005, the police questioned Respondent.  
16 Respondent initially denied having taken the evidence, but he later admitted to taking the  
17 Hydrocodone and Morphine and he admitted to self medicating for a back injury he  
18 incurred nine years prior.

19 6. On August 17, 2005 Respondent was admitted to a substance abuse clinic  
20 and later transitioned to a treatment program with a diagnosis of opiate and sedative-  
21 hypnotic dependence. Respondent left the treatment program citing monetary insufficiency  
22 to complete the program and he did not return for treatment.

23 7. On September 14, 2005 the Ohio Board summarily suspended Respondent's  
24 license and ordered him to complete an Ohio Board approved inpatient treatment.  
25

1           8.       On October 17, 2005 Respondent pled guilty to one count of felony theft, one  
2 count of misdemeanor falsification and entered a motion of treatment in lieu of conviction.  
3 All criminal proceedings were suspended until Respondent completed the various  
4 requirements of the court order for treatment within two years. Respondent did not inform  
5 the Board of his felony and misdemeanor pleas within ten days of being charged. Instead,  
6 the Board received notification from the Delaware County Prosecuting Attorney that  
7 Respondent entered into a guilty plea, that Respondent had been granted an intervention  
8 in lieu of conviction and that the Ohio Board summarily suspended Respondent's license.

9           9.       On April 12, 2006, the Ohio Board indefinitely suspended Respondent's  
10 license until he successfully completed inpatient treatment and aftercare monitoring. On  
11 April 18, 2006, Respondent signed an Interim Consent Agreement with the Arizona  
12 Medical Board restricting Respondent from practicing clinical or administrative medicine  
13 and from prescribing any form of treatment including prescription medications.

#### 14                                   **CONCLUSIONS OF LAW**

15           1.       The Board possesses jurisdiction over the subject matter hereof and over  
16 Respondent.

17           2.       The conduct and circumstances described above constitute unprofessional  
18 conduct pursuant to A.R.S. § 32-1401(27)(a) ("[v]iolating any federal or state laws, rules or  
19 regulations applicable to the practice of medicine"), specifically, A.R.S. § 32-3208(A) ("[a]  
20 health professional who has been charged with a misdemeanor involving conduct that may  
21 affect patient safety or a felony after receiving or renewing a license or certificate must  
22 notify the health professional's regulatory board in writing within ten working days after the  
23 charge is filed); A.R.S. § 32-1401(27)(d) ("[c]ommitting a felony, whether or not involving  
24 moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by  
25 any court of competent jurisdiction or a plea of no contest is conclusive evidence of the

commission"); A.R.S. § 32-1401(27)(f) ("[h]abitual intemperance in the use of alcohol or  
habitual substance abuse"); A.R.S. § 32-1401(27)(g) ("[u]sing controlled substances  
except if prescribed by another physician for use during a prescribed course of treatment")  
and A.R.S. § 32-1401(27)(o) ("[a]ction taken against a doctor of medicine by another  
licensing or regulatory jurisdiction due to that doctor's mental or physical inability to  
engage safely in the practice of medicine, the doctor's medical incompetence or for  
unprofessional conduct as defined by that jurisdiction and that corresponds directly or  
indirectly to an act of unprofessional conduct prescribed by this paragraph. The action  
taken may include refusing, denying, revoking or suspending a license by that jurisdiction  
or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or  
monitoring a licensee by that jurisdiction or placing a licensee on probation by that  
jurisdiction.").

#### ORDER

##### IT IS HEREBY ORDERED THAT:

1. Respondent's license is suspended for a period of **twelve months** to  
complete a Board approved treatment program within twelve months beginning on the  
effective date of this Order. Upon completion of the approved treatment program  
Respondent is placed on probation pursuant to the terms of Paragraph 2 of this Order.  
Failure to comply with this Order will result in the case being referred to formal hearing for  
Revocation.

2. Respondent is placed on Probation for **five years** with the following terms  
and conditions:

a. Respondent shall submit quarterly declarations under penalty of perjury on  
forms provided by the Board, stating whether there has been compliance with all

conditions of probation. The declarations shall be submitted on or before the 15th of March, June, September and December of each year, beginning on or before June, 2007.

b.1. **Participation.** Respondent shall promptly enroll in and participate in the Board's program for the treatment and rehabilitation of physicians who are impaired by alcohol or drug abuse ("MAP"). Respondent's participation in MAP may be unilaterally terminated with or without cause at the Board's discretion at any time after the issuance of this Order.

2. **Relapse Prevention Group.** Respondent shall attend MAP's relapse prevention group therapy sessions one time per week for the duration of this Order, unless excused by the MAP relapse prevention group facilitator for good cause such as illness or vacation. Respondent shall instruct the MAP relapse prevention group facilitators to release to Board Staff, upon request, all records relating to Respondent's treatment, and to submit monthly reports to Board Staff regarding attendance and progress. The reports shall be submitted on or before the 10th day of each month.

3. **12 Step or Self-Help Group Meetings.** Respondent shall attend ninety 12-step meetings or other self-help group meetings appropriate for substance abuse and approved by Board Staff, for a period of ninety days beginning not later than either (a) the first day following Respondent's discharge from chemical dependency treatment or (b) the date of this Order.

4. Following completion of the ninety meetings in ninety days, Respondent shall participate in a 12-step recovery program or other self-help program appropriate for substance abuse as recommended by the MAP Director and approved by Board Staff. Respondent shall attend a minimum of three 12-step or other self-help program meetings per week for a total of twelve per month. Two of the twelve meetings must be Caduceus meetings. Respondent must maintain a log of all self-help meetings.



1 Board Staff will provide the log to Respondent.

2           **5.     Board-Staff Approved Primary Care Physician.** Respondent shall  
3 promptly obtain a primary care physician and shall submit the name of the physician to  
4 Board Staff in writing for approval. The Board-approved primary care physician ("PCP")  
5 shall be in charge of providing and coordinating Respondent's medical care and treatment.  
6 Except in an *Emergency*, Respondent shall obtain medical care and treatment only from  
7 the PCP and from health care providers to whom the PCP refers Respondent.  
8 Respondent shall request that the PCP document all referrals in the medical record.  
9 Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and  
10 provide a copy of this Order the PCP. Respondent shall also inform all other health care  
11 providers who provide medical care or treatment that Respondent is participating in MAP.

12           a.     "*Emergency*" means a serious accident or sudden illness that, if not  
13           treated immediately, may result in a long-term medical problem or loss  
14           of life.

15           **6.     Medication.** Except in an *Emergency*, Respondent shall take no  
16 *Medication* unless the PCP or other health care provider to whom the PCP refers  
17 Respondent prescribes the *Medication*. Respondent shall not self-prescribe any  
18 *Medication*.

19           a.     "*Medication*" means a prescription-only drug, controlled substance,  
20           and over-the counter preparation, other than plain aspirin, plain ibuprofen,  
21           and plain acetaminophen.

22           **7.**     If a controlled substance is prescribed, dispensed, or is administered  
23 to Respondent by any person other than PCP, Respondent shall notify the PCP in writing  
24 within 48 hours and notify the MAP Director immediately. The notification shall contain all  
25 information required for the medication log entry specified in paragraph 8. Respondent



1 shall request that the notification be made a part of the medical record. This paragraph  
2 does not authorize Respondent to take any *Medication* other than in accordance with  
3 paragraph 6.

4           **8.     Medication Log.** Respondent shall maintain a current legible log of  
5 all *Medication* taken by or administered to Respondent, and shall make the log available  
6 to the Board Staff upon request. For *Medication* (other than controlled substances) taken  
7 on an on-going basis, Respondent may comply with this paragraph by logging the first and  
8 last administration of the *Medication* and all changes in dosage or frequency. The log, at  
9 a minimum, shall include the following:

- 10           a.     Name and dosage of *Medication* taken or administered;
- 11           b.     Date taken or administered;
- 12           c.     Name of prescribing or administering physician;
- 13           d.     Reason *Medication* was prescribed or administered.

14 This paragraph does not authorize Respondent to take any *Medication* other than in  
15 accordance with paragraph 6.

16           **9.     No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol  
17 or any food or other substance containing poppy seeds or alcohol.

18           **10.   Biological Fluid Collection.** During all times that Respondent is  
19 physically present in the State of Arizona and such other times as Board Staff may direct,  
20 Respondent shall promptly comply with requests from Board Staff or MAP Director to  
21 submit to witnessed biological fluid collection. If Respondent is directed to contact an  
22 automated telephone message system to determine when to provide a specimen,  
23 Respondent shall do so within the hours specified by Board Staff. For the purposes of this  
24 paragraph, in the case of an in-person request, "promptly comply" means "immediately."  
25 In the case of a telephonic request, "promptly comply" means that, except for good cause

1 shown, Respondent shall appear and submit to specimen collection not later than two  
2 hours after telephonic notice to appear is given. The Board in its sole discretion shall  
3 determine good cause.

4           **11.** Respondent shall provide Board Staff in writing with one telephone  
5 number that shall be used to contact Respondent on a 24 hour per day/seven day per  
6 week basis to submit to biological fluid collection. For the purposes of this section,  
7 telephonic notice shall be deemed given at the time a message to appear is left at the  
8 contact telephone number provided by Respondent. Respondent authorizes any person  
9 or organization conducting tests on the collected samples to provide testing results to the  
10 Board and the MAP Director.

11           **12.** Respondent shall cooperate with collection site personnel regarding  
12 biological fluid collection. Repeated complaints from collection site personnel regarding  
13 Respondent's lack of cooperation regarding collection may be grounds for termination  
14 from MAP.

15           **13. Out of State Travel and/or Unavailability at Home or Office**  
16 **Telephone Number.** Respondent shall provide Board Staff at least three business  
17 days advance written notice of any plans to be away from office or home when such  
18 absence would prohibit Respondent from responding to an order to provide a biological  
19 fluid specimen or from responding to communications from the Board. The notice shall  
20 state the reason for the intended absence from home or office, and shall provide a  
21 telephone number that may be used to contact Respondent.

22           **14. Payment for Services.** Respondent shall pay for all costs,  
23 including personnel and contractor costs, associated with participating in MAP at  
24 time service is rendered, or within 30 days of each invoice sent to Respondent.

25           **15. Examination.** Respondent shall submit to mental, physical, and

1 medical competency examinations at such times and under such conditions as directed by  
2 the Board to assist the Board in monitoring Respondent's ability to safely perform as a  
3 physician and Respondent's compliance with the terms of this Order.

4           **16. Treatment.** Respondent shall submit to all medical, substance  
5 abuse, and mental health care and treatment ordered by the Board.

6           **17. Obey All Laws.** Respondent shall obey all federal, state and local  
7 laws, and all rules governing the practice of medicine in the State of Arizona.

8           **18. Interviews.** Respondent shall appear in person before the Board and  
9 its Staff and MAP committees for interviews upon request, upon reasonable notice.

10           **19. Address and Phone Changes, Notice.** Respondent shall  
11 immediately notify the Board in writing of any change in office or home addresses and  
12 telephone numbers.

13           **20. Relapse, Violation.** In the event of chemical dependency relapse by  
14 Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent  
15 shall promptly enter into an Interim Consent Agreement for Practice Restriction that  
16 requires, among other things, that Respondent not practice medicine until such time as  
17 Respondent successfully completes long-term inpatient or residential treatment program  
18 for chemical dependency designated by Board Staff and obtains affirmative approval from  
19 the Board or the Executive Director to return to the practice of medicine. Prior to approving  
20 Respondent's request to return to the practice of medicine, Respondent may be required  
21 to submit to witnessed biological fluid collection, undergo any combination of physical  
22 examination, psychiatric or psychological evaluation and/or successfully pass the special  
23 purpose licensing examination or the Board may conduct interviews for the purpose of  
24 assisting it in determining the ability of Respondent to safely return to the practice of  
25 medicine. **In no respect shall the terms of this paragraph restrict the Board's**

1 authority to initiate and take disciplinary action for violation of this Order.

2           **21.    Notice Requirements.**

3                   (A) Respondent shall immediately provide a copy of this Order to all  
4 employers and all hospitals and free standing surgery centers where Respondent currently  
5 has privileges. Within 30 days of the date of this Order, Respondent shall provide the  
6 Board with a signed statement of compliance with this notification requirement. Upon any  
7 change in employer or upon the granting of privileges at additional hospitals and free  
8 standing surgery centers, Respondent shall provide the employer, hospital or free standing  
9 surgery center with a copy of this Order. Within 30 days of a change in employer or upon  
10 the granting of privileges at additional hospitals and free standing surgery centers,  
11 Respondent shall provide the Board with a signed statement of compliance with this  
12 notification requirement.

13                   (B) Respondent is further required to notify, in writing, all employers,  
14 hospitals and free standing surgery centers where Respondent currently has or in the  
15 future gains employment or privileges, of a chemical dependency relapse, use of drugs or  
16 alcohol in violation of this Order and/or entry into a treatment program. Within seven days  
17 of any of these events Respondent shall provide the Board written confirmation of  
18 compliance with this notification requirement.

19           **22.    Public Record.** This Order is a public record.

20           **23.    Out-of-State.** In the event Respondent resides or practices as a  
21 physician in a state other than Arizona, Respondent shall participate in the rehabilitation  
22 program sponsored by that state's medical licensing authority or medical society.  
23 Respondent shall cause the monitoring state's program to provide written reports to the  
24 Board regarding Respondent's attendance, participation, and monitoring. The reports  
25 shall be due quarterly on or before the 15th day of March, June, September, and

1 December of each year, until the Board terminates this requirement in writing. The  
2 monitoring state's program and Respondent shall immediately notify the Board if  
3 Respondent: a) is non-compliant with any aspect of the monitoring requirements; b)  
4 relapses; c) tests positive for controlled substances; d) has low specific gravity urine drug  
5 test(s), missed and/or late urine drug tests, or otherwise rejected urine drug tests; and e) is  
6 required to undergo any additional treatment.

7           **24.** This Order supersedes all previous consent agreements and  
8 stipulations between the Board and/or the Executive Director and Respondent.

9           **25.** The Board retains jurisdiction and may initiate new action based upon  
10 any violation of this Order.

11           **26.** Respondent shall immediately obtain a treating psychiatrist approved  
12 by Board Staff and shall remain in treatment with the psychiatrist until further order of the  
13 Executive Director. Respondent shall instruct the psychiatrist to release to Board Staff,  
14 upon request, all records relating to Respondent's treatment, and to submit quarterly  
15 written reports to Board Staff regarding diagnosis, prognosis, medications, and  
16 recommendations for continuing care and treatment of Respondent. The reports shall be  
17 submitted on or before the 15th day of March, June, September and December of each  
18 year, beginning on or before June, 2007.

19           3.    Obey All Laws

20           Respondent shall obey all state, federal and local laws, all rules governing the  
21 practice of medicine in Arizona, and remain in full compliance with any court order criminal  
22 probation, payments and other orders.

23           4.    Tolling

24           In the event Respondent should leave Arizona to reside or practice outside the  
25 State or for any reason should Respondent stop practicing medicine in Arizona,

1 Respondent shall notify the Executive Director in writing within ten days of departure and  
2 return or the dates of non-practice within Arizona. Non-practice is defined as any period of  
3 time exceeding thirty days during which Respondent is not engaging in the practice of  
4 medicine. Periods of temporary or permanent residence or practice outside Arizona or of  
5 non-practice within Arizona, will not apply to the reduction of the probationary period.

6 5. This Order is the final disposition of case number MD-06-0258A.

7 DATED AND EFFECTIVE this 8th day of June, 2007.



ARIZONA MEDICAL BOARD

15 By

  
Timothy C. Miller, J.D.  
Executive Director

16 ORIGINAL of the foregoing filed  
17 this 8th day of June, 2007 with:

18 Arizona Medical Board  
19 9545 E. Doubletree Ranch Road  
20 Scottsdale, AZ 85258

21 EXECUTED COPY of the foregoing mailed  
22 this 8th day of June, 2007 to:

23 David A. Rath, M.D.  
24 Address of Record

25   
Investigational Review